IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.710 OF 2002

Anil Shankar Chavan ...Appellant

Vs.

The Municipal Corporation of
Greater Bombay ...Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 22, 2005.

P.C.:

1. Admit. Respondent waives service. Taken up for hearing forthwith. The challenge in this Appeal is to the order dated 25th July 2002 passed by the learned Judge by which Notice of Motion taken out by the Appellant/Plaintiff for restoration of the suit has been dismissed.

2. The learned Counsel for the Appellant submitted that now the Appellant is maintaining good health and it is not necessary to record his evidence by appointing Court Commissioner on the ground of his illhealth. The learned Counsel further stated that the Appellant will immediately file Affidavit of examination-in-chief within the time fixed by this Court. The learned Counsel, therefore, submitted that by taking a liberal view, the suit may be ordered to be restored.

3. The learned Counsel for the Respondent pointed out that on 16th September 1997 the suit was dismissed for default. Under the orders passed by this Court, the suit was restored with

the direction that the same shall be disposed of on or before 31st December 1999. Thereafter, the suit was again dismissed for default on 27th July 2000. The said time limit was later on extended when the suit was again restored by setting aside the order of dismissal. The extended time limit for disposal was to expire on 31st January 2001. The suit was dismissed on third occasion on 12th January 2001. The Notice of Motion for restoration was filed five months thereafter. Considering the said conduct, the learned Counsel for the Respondent submitted that no case is made for restoration.

4. From what is stated in the impugned order it appears that the Appellant appears to be negligent in prosecuting the suit. The suit has been repeatedly dismissed for default as a result the learned Trial Judge could not abide by the directions given by this Court for early disposal of the suit. I find from the record that in this Appeal, ad-interim relief has been granted on 2nd August 2002 protecting the structure in which the Appellant is carrying on his business.

5. Considering the fact that the suit relates to business premises of the Appellant, by way of indulgence and as a last chance the suit deserves to be restored. However, looking to the recalcitrant conduct of the Appellant, he will have to pay costs of Rs.10,000/- as a condition precedent. The Appellant will have to file Affidavit of examination-in-chief within a period of eight weeks from today. The suit is restored

subject to the condition that the Appellant will cooperate in early disposal of the suit and will not seek adjournments.

6. Hence, I pass the following order :

a) The impugned Judgment and Order dated 25th July 2002 is quashed and set aside.

b) Notice of Motion No.2570 of 2001 is made absolute and L.C.Suit NO.1126 of 1991 is restored to file subject to the condition of the Appellant paying a sum of Rs.10,000/- by way of costs to the Respondent within a period of four weeks from today. If the amount of costs is not paid or accepted by the Respondent, the same shall be deposited in the Trial Court. It is made clear that if the amount is not deposited within stipulated time, the order of dismissal of the suit will stand.

c) In case the amount of costs is deposited by the Appellant, the Appellant will file Affidavit of examination-in-chief within a period of eight weeks from today. If Affidavit of examination-in-chief is not filed by the Appellant within the stipulated time, the learned Trial Judge will be at liberty to dismiss the suit for default.

d) The Appellant will not seek unnecessary adjournments.

e) If the Trial Court finds that the Appellant is not cooperating for early disposal of the suit, the Trial Judge will be at liberty to dismiss the suit for non prosecution.

f) The learned Trial Judge is directed hear and decide the suit as expeditiously as possible and in any event on or before 31st October 2005. Till the disposal of the suit, ad-interim order passed by this Court on 2nd August 2002 will continue to operate.

. Appeal from order is disposed of in above terms. No order as to costs.

. Parties to act upon authenticated copy of this order.

JUDGE.